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**Patent and Trademark Office**

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/312,352	05/14/99	MACDONALD	KEY1019US

PM82/0301

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EXAMINER

NEUDER, W

ART UNIT	PAPER NUMBER
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3672

DATE MAILED: 03/01/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

# Office Action Summary

Application No.  
**09/312,352**

Applicant(s)  
**MacDonald et al**

Examiner  
**William Neuder**

Group Art Unit  
**3672**



☒ Responsive to communication(s) filed on Jan 24, 2001

☒ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire three month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

## Disposition of Claims

☒ Claim(s) 1 and 3-15 is/are pending in the application.

Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

☐ Claim(s) \_\_\_\_\_ is/are allowed.

☒ Claim(s) 1 and 3-15 is/are rejected.

☐ Claim(s) \_\_\_\_\_ is/are objected to.

☐ Claims \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been  
☐ received.

☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_.

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

☐ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(f) or (g) prior art under 35 U.S.C. 103(a).

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3. Claims 1 and 3-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Maguire et al in view of Dawson.

Maguire et al discloses a retaining wall block member having all of the claimed features except for pins and pin cavities for locking the block together. As shown in Fig. 3, concrete tabs 32 extend upwardly and are received in slots 30 on the lower face of a block in an adjoining row. Fig. 3 also shows how the blocks are aligned one over the other so that the void 18 aligns with the void created by the neck portion of a lower block. Dawson discloses that the use of pins and pin cavities to lock retaining blocks together is well known. It would have been considered obvious to one having ordinary skill in the art at the time the invention was made to have substituted the aligning pins and pin cavities of Dawson for the aligning concrete pins and slots of Maguire et al since they are equivalent parts for performing equivalent functions. As to claim 5, both Maguire et al and Dawson show a second set of pins for alignment. As to claim 6, the sidewall faces taper inwardly. As to claim 7, the use of notches to form weak links to break concrete blocks is old and well known. It would have been considered obvious to one having ordinary skill in the art at the time the invention was made to have formed the block of Maguire et al with breaking areas since the use of breaking areas is well known for the purpose of the block breaking cleanly at a desired point. As to claims 12,13 and 15, incorporation of known elements used in retainer wall structure does not constitute allowable subject matter. Maguire et al could accommodate rebar, a post or a pilaster if one of ordinary skill in the art so desired. It would

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have been considered an obvious design choice to prove the retaining wall structure of Maguire et al with rebar, a post or a pilaster.

***Response to Arguments***

4. Applicant's arguments filed 1/24/01 have been fully considered but they are not persuasive.

Applicant's only argument is that there is no reason to combine the pins and pin cavities of Dawson with the retaining block of Maguire. Applicant supports this by pointing out lines in the specification of Maguire et al which "teach" away from using pins and pin cavities. While Maguire et al sets forth in his specification that the use of slots 30 with concrete tabs 32 is an improvement over pins and pin cavities, Maguire et al is not considered to teach that pins and pin cavities could not be used. If pins and pin cavities were used in place of the slots and concrete slabs, the same retaining block would still be present. The use of pins and pin cavities would not destroy the block of Maguire et al. Dawson is used to show that pins and pin cavities are a known locking means in retaining blocks. Concrete tabs and slots are a known locking means in retaining blocks. Substitution of one known means for another which perform equivalent functions is considered obvious.

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***Conclusion***

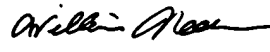
5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to William P. Neuder whose telephone number is (703) 308-2168.

W.P.N.

February 28, 2001

  
William Neuder  
Primary Examiner